

ENTERED

September 15, 2021

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISIONMARTIN GASCA & JOSE SALVADOR
FLORES, JR.,

Plaintiffs,

VS.

OMAR LUCIO, *et al.*,

Defendants.

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CIVIL ACTION NO. 1:20-CV-160

ORDER ADOPTING REPORT AND RECOMMENDATION

In this consolidated action, Plaintiffs Martin Gasca and Jose Salvador Flores, Jr. brought suit after allegedly contracting COVID-19 while incarcerated at the Carrizales-Rucker Detention Center in Olmito, Texas. (Order, Doc. 94, 1) Gasca and Flores sued thirteen defendants, who, in four motions, move to dismiss the Plaintiffs' causes of action. (Motion by Def. Lucio, *et al.* (Gasca Case), Doc. 10; Motion by Dr. Almeida (Gasca Case), Doc. 13; Motion by Dr. Almeida (Flores Case), Doc. 41; Motion by Def. Lucio, *et al.* (Flores Case), Doc. 78)

A United States Magistrate Judge recommends that each of the Defendants' motions be granted and that Plaintiffs' causes of action be dismissed. (R&R, Doc. 94) Gasca and Flores filed timely objections to the Report and Recommendation. (Gasca Objs., Doc. 99; Flores Objs.,¹ Doc. 100)

The Court has conducted a *de novo* review of each Plaintiff's Complaint, the briefing of the parties, the record in this case, and the applicable law. In their respective objections, Gasca and Flores largely present arguments that the Magistrate Judge considered, and the Report and Recommendation resolves those arguments adequately and correctly.

¹ Flores entitled his filing a "Rule 60(b) Motion." But that rule is inapplicable as no final judgment or order exists. The Court treats the filing as objections to the Report and Recommendation.

The Court overrules the objections that Gasca and Flores filed, and **ADOPTS** the Report and Recommendation (Doc. 94). As a result, it is:

ORDERED that Defendants' Rule 12(b)(1) and 12(b)(6) Motion to Dismiss Plaintiff's Complaint with Authority in Support and In the Alternative Rule 12(e) Motion for a More Definite Statement (Doc. 10) is **GRANTED**;

ORDERED that Defendant Dr. Alberto Almeida's Rule 12(b)(1) and 12(b)(6) Motion to Dismiss Plaintiff's Complaint with Authority in Support and In the Alternative Rule 12(e) Motion for a More Definite Statement (Doc. 13) is **GRANTED**;

ORDERED that Defendant Alberto Almeida's Rule 12(b)(1) and 12(b)(6) Motion to Dismiss Plaintiff Jose Salvador Flores, Jr.'s Complaint with Authority in Support and/or In the Alternative Rule 12(e) Motion for a More Definite Statement (Doc. 41) is **GRANTED**;

ORDERED that Defendants' Rule 12(b)(1) and 12(b)(6) Motion to Dismiss Plaintiff's Complaint with Authority in Support (Doc. 78) is **GRANTED**;

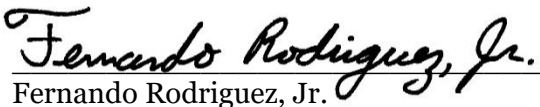
ORDERED that all causes of action by Plaintiff Martin Gasca are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted; and

ORDERED that all causes of action by Plaintiff Jose Salvador Flores, Jr. are **DISMISSED WITH PREJUDICE** for failure to state a claim upon which relief can be granted.

Each party shall bear its own attorneys' fees and costs.

The Clerk of Court is directed to close this matter.

Signed on September 15, 2021.


Fernando Rodriguez, Jr.
United States District Judge